

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANTHONY CRIVELLO RUSSO,

Plaintiff,

ANSWER

-against-

Case No.: 07 Civ. 5795

JAN B. GOLDING, POLICE OFFICER, JOHN
DIMILIA, SERGEANT, DARREL ALGARIN, POLICE
OFFICER, MICHAEL GUEDES, POLICE OFFICER,
JOSEPH VOUSDEN, TROOPER and KEVEN M.
CHORZEMPA, POLICE OFFICER,

Defendants.
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Defendants, JOHN DIMILIA, DARREL ALGARIN, and MICHAEL GUEDES, by
their attorneys, MIRANDA SOKOLOFF SAMBURSKY SLONE VERVENIOTIS LLP,
answering the plaintiff's Amended Complaint, sets forth, upon information and belief, the
following:

Statement of The Case

1. Deny the allegations contained in the paragraph of the complaint numbered "1".
- 1-a. Deny the allegations contained in the paragraph of the complaint numbered "1-a" and respectfully refer all questions of law to the Court for adjudication.
- 1-b. Deny the allegations contained in the paragraph of the complaint numbered "1-b".
- 1-c. Deny the allegations contained in the paragraph of the complaint numbered "1-c".

2. Deny the allegations contained in the paragraph of the complaint numbered “2” and respectfully refer all questions of law to the Court for adjudication.

3. Deny having knowledge and information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the complaint numbered “3”.

Jurisdictional Allegations

4. Deny the allegations contained in the paragraph of the complaint numbered “4” and respectfully refer all questions of law to the Court for adjudication.

5. Deny the allegations contained in the paragraph of the complaint numbered “5” and respectfully refer all questions of law to the Court for adjudication.

6. Deny the allegations contained in the paragraph of the complaint numbered “6” and respectfully refer all questions of law to the Court for adjudication.

7. Deny having knowledge and information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the complaint numbered “7”.

8. Deny the allegations contained in the paragraph of the complaint numbered “8”.

9. Deny the allegations contained in the paragraph of the complaint numbered “9”.

10. Deny having knowledge and information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the complaint numbered “10” and respectfully refer all questions of law to the Court for adjudication.

11. Deny the allegations contained in the paragraph of the complaint numbered “11” and respectfully refer all questions of law to the Court for adjudication.

Parties

12. Deny having knowledge and information sufficient to form a belief as to the

truth of the allegations contained in the paragraph of the complaint numbered “12”.

13. Deny having knowledge and information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the complaint numbered “13”.

14. Admit the allegations contained in the paragraph of the complaint numbered “14”.

15. Admit the allegations contained in the paragraph of the complaint numbered “15”.

16. Admit the allegations contained in the paragraph of the complaint numbered “16”.

17. Deny having knowledge and information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the complaint numbered “17”.

18. Deny having knowledge and information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the complaint numbered “18”.

Legal Claims

Memorandum of Law

Controlling Maxims of Law and Case Law

Legal Claims For Cause of Action Four, and Five Prosecution with a failure to state a cause of action:

19. Deny the allegations contained in the paragraph of the complaint numbered “19” and respectfully refer all questions of law to the Court for adjudication.

20. Deny the allegations contained in the paragraph of the complaint numbered “20” and respectfully refer all questions of law to the Court for adjudication.

21. Deny the allegations contained in the paragraph of the complaint numbered "21" and respectfully refer all questions of law to the Court for adjudication.

22. Deny the allegations contained in the paragraph of the complaint numbered "22" and respectfully refer all questions of law to the Court for adjudication.

23. Deny the allegations contained in the paragraph of the complaint numbered "23" and respectfully refer all questions of law to the Court for adjudication.

24. Deny the allegations contained in the paragraph of the complaint numbered "24" and respectfully refer all questions of law to the Court for adjudication.

25. Deny having knowledge and information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the complaint numbered "25" and respectfully refer all questions of law to the Court for adjudication.

Legal Claims For Cause of Two, Six, Seven, Eight and Thirteen:

Execution of warrantless arrest without probable cause or exigent circumstances:

26. Deny the allegations contained in the paragraph of the complaint numbered "26" and respectfully refer all questions of law to the Court for adjudication.

27. Deny the allegations contained in the paragraph of the complaint numbered "27" and respectfully refer all questions of law to the Court for adjudication.

28. Deny the allegations contained in the paragraph of the complaint numbered "28".

29. Deny the allegations contained in the paragraph of the complaint numbered "29".

30. Deny the allegations contained in the paragraph of the complaint numbered “30” and respectfully refer all questions of law to the Court for adjudication.

31. Deny the allegations contained in the paragraph of the complaint numbered “31” and respectfully refer all questions of law to the Court for adjudication.

32. Deny the allegations contained in the paragraph of the complaint numbered “32” and respectfully refer all questions of law to the Court for adjudication.

33. Deny the allegations contained in the paragraph of the complaint numbered “33” and respectfully refer all questions of law to the Court for adjudication.

34. Deny the allegations contained in the paragraph of the complaint numbered “34” and respectfully refer all questions of law to the Court for adjudication.

35. Deny the allegations contained in the paragraph of the complaint numbered “35” and respectfully refer all questions of law to the Court for adjudication.

36. Deny the allegations contained in the paragraph of the complaint numbered “36” and respectfully refer all questions of law to the Court for adjudication.

37. Deny the allegations contained in the paragraph of the complaint numbered “37” and respectfully refer all questions of law to the Court for adjudication.

38. Deny the allegations contained in the paragraph of the complaint numbered “38” and respectfully refer all questions of law to the Court for adjudication.

39. Deny the allegations contained in the paragraph of the complaint numbered “39” and respectfully refer all questions of law to the Court for adjudication.

40. Deny the allegations contained in the paragraph of the complaint numbered “40” and respectfully refer all questions of law to the Court for adjudication.

**Legal Claims For Cause of Action One, Four, Eleven and Twelve
Vindictive Prosecution:**

41. Deny the allegations contained in the paragraph of the complaint numbered "41" and respectfully refer all questions of law to the Court for adjudication.

42. Deny the allegations contained in the paragraph of the complaint numbered "42" and respectfully refer all questions of law to the Court for adjudication.

43. Deny the allegations contained in the paragraph of the complaint numbered "43" and respectfully refer all questions of law to the Court for adjudication.

44. Deny the allegations contained in the paragraph of the complaint numbered "44" and respectfully refer all questions of law to the Court for adjudication.

45. Deny the allegations contained in the paragraph of the complaint numbered "45" and respectfully refer all questions of law to the Court for adjudication.

46. Deny the allegations contained in the paragraph of the complaint numbered "46" and respectfully refer all questions of law to the Court for adjudication.

47. Deny the allegations contained in the paragraph of the complaint numbered "47" and respectfully refer all questions of law to the Court for adjudication.

**Legal Claims For Cause of Action Three and Four
Suppression and Concealment of Exculpatory Evidence:**

48. Deny the allegations contained in the paragraph of the complaint numbered "48" and respectfully refer all questions of law to the Court for adjudication.

49. Deny the allegations contained in the paragraph of the complaint numbered "49" and respectfully refer all questions of law to the Court for adjudication.

50. Deny the allegations contained in the paragraph of the complaint numbered “50” and respectfully refer all questions of law to the Court for adjudication.

51. Deny the allegations contained in the paragraph of the complaint numbered “51” and respectfully refer all questions of law to the Court for adjudication.

General Factual Allegation

52. Deny the allegations contained in the paragraph of the complaint numbered “52”.

53. Deny having knowledge and information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the complaint numbered “53”.

54. Deny having knowledge and information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the complaint numbered “54”.

55. Deny having knowledge and information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the complaint numbered “55”.

56. Deny having knowledge and information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the complaint numbered “56”.

57. Deny having knowledge and information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the complaint numbered “57” and respectfully refer all questions of law to the Court for adjudication.

58. Deny having knowledge and information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the complaint numbered “58”.

59. Deny having knowledge and information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the complaint numbered “59”.

60. Deny having knowledge and information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the complaint numbered "60".

61. Deny having knowledge and information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the complaint numbered "61".

62. Deny having knowledge and information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the complaint numbered "62".

63. Deny having knowledge and information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the complaint numbered "63".

64. Deny having knowledge and information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the complaint numbered "64".

65. Deny having knowledge and information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the complaint numbered "65".

66. Deny having knowledge and information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the complaint numbered "66".

67. Deny the allegations contained in the paragraph of the complaint numbered "67".

68. Deny the allegations contained in the paragraph of the complaint numbered "68".

69. Deny having knowledge and information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the complaint numbered "69".

Factual Allegation Common Elements For Offenses

70. Deny the allegations contained in the paragraph of the complaint numbered “70” and all of its sub-parts.

71. Deny the allegations contained in the paragraph of the complaint numbered “71” and all of its sub-parts.

72. Deny the allegations contained in the paragraph of the complaint numbered “72” and all of its sub-parts.

73. Deny the allegations contained in the paragraph of the complaint numbered “73” and all of its sub-parts.

74. Deny the allegations contained in the paragraph of the complaint numbered “74” and respectfully refer all questions of law to the Court for adjudication.

75. Deny the allegations contained in the paragraph of the complaint numbered “75” and all of its sub-parts.

76. Deny the allegations contained in the paragraph of the complaint numbered “76” and all of its sub-parts.

77. Deny the allegations contained in the paragraph of the complaint numbered “77” and all of its sub-parts.

78. Deny the allegations contained in the paragraph of the complaint numbered “78” and all of its sub-parts.

79. Deny the allegations contained in the paragraph of the complaint numbered “79” and all of its sub-parts.

80. Deny the allegations contained in the paragraph of the complaint numbered “80” and all of its sub-parts.

81. Deny the allegations contained in the paragraph of the complaint numbered “81” and all of its sub-parts.

82. Deny the allegations contained in the paragraph of the complaint numbered “82” and all of its sub-parts.

AFFIRMATIVE DEFENSES:

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

83. The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

84. At all times relevant to the acts alleged in the complaint, defendants, their agents and officials, acted reasonably, properly, and in the lawful exercise of their discretion. Therefore, they are entitled to governmental immunity from liability.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

85. There was probable cause for plaintiff’s arrest and detention.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

86. Any injury alleged to have been sustained resulted from plaintiff’s own culpable or negligent conduct and was not the proximate result of any act of the defendants.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

87. Defendants JOHN DIMILIA, DARREL ALGARIN, and MICHAEL GUEDES have not violated any clearly established constitutional or statutory right of which a reasonable person would have known and, therefore, are protected by qualified immunity.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

88. Defendants have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor have they violated any Act of Congress providing for the protection of civil rights.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

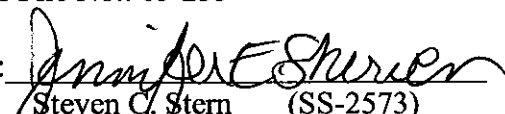
89. Pursuant to the June 12, 2008 Order Adopting Report and Recommendation of U.S. District Judge Kenneth M. Karas, all of plaintiff's claims have been dismissed, except his claim for excessive force.

WHEREFORE, defendants JOHN DIMILIA, DARREL ALGARIN, and MICHAEL GUEDES, demand judgment against the plaintiff in a sum which exceeds the jurisdictional limits of all lower courts of the State of New York, together with the costs and disbursements of this action.

Dated: Mineola, New York
June 26, 2008

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By:


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Jennifer E. Sherven (JS-4195)

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